

MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (the "**Agreement**") is entered into as of the _____ day of _____, 2010 (the "**Effective Date**"), by and between Indiana Cord Blood Bank, Inc., an Indiana corporation, having its principal place of business at 402 W. Washington Street, Room 461, Indianapolis, Indiana 46204 (the "**Bank**") and _____, a(n) _____ (the "**Contractor**") having its principal place of business at _____ (the "**Facility**"). As used herein, the term "Facility" shall also include any additional facilities that may be operated by Contractor in the future, so long as such facilities meet the same quality and other standards set forth herein. Each entity may hereafter be referred to as a "**Party**" or jointly as the "**Parties**."

RECITALS

WHEREAS, the Indiana Family and Social Services Administration, on behalf of the Bank, has solicited proposals pursuant to a Request for Proposals (the "**RFP**") for the provision of certain services more fully described in this Agreement for the collection, transportation, storage and processing of umbilical cord blood units and related blood and/or other biological samples (collectively, each a "**Unit**"); and

WHEREAS, Contractor responded to the RFP and desires to provide the services described in this Agreement to the Bank, and the Bank desires to obtain such services from the Contractor.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual representations, warranties, covenants, and agreements herein contained, and intending to be legally bound, the parties hereto agree as follows:

ARTICLE 1. Duties of the Parties.

1.1 **Services.** The Contractor shall provide the services and products to the Bank as set forth in Exhibit A and/or as may be identified in any statement of work (each a "**Statement of Work**") mutually agreed to and signed by both Parties in connection with the terms set forth in Exhibit A (collectively, the "**Services**"). Exhibit A and any executed Statement of Work are/will be attached hereto and incorporated herein in their entirety.

1.2 **Maintenance of Records.** Contractor and its approved subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all Services provided and costs incurred under this Agreement (whether in electronic, paper, or any other format) (collectively, the "**Records**"), separate and apart from any other records and/or information Contractor may store in connection with its other clients and/or business operations. Such Records shall include, but are not limited to, any information collected from and/or related to a Unit (such as protected health information or other confidential information), and any database comprising a compilation of such information (the "**Data**"). In addition to the terms set forth in Articles 8 and 9, any Records comprising Data shall be treated as Confidential Information (as defined herein) and the Contractor will (a) use a secure information management system and software to track, store and exchange any such Data in accordance with the National Marrow Donor Program's then-current standards and applicable participation criteria (the "**NMDP Standards**"), and (b) adhere to established quality control processes approved by the Bank with respect to such Data. Additionally, Contractor's maintenance, use and storage of the Records shall comply with all applicable laws and NMDP Standards, including without limitation, laws relating to privacy of health information and donor confidentiality.

1.3 Access to Records. Contractor will ensure an appropriate infrastructure is in place, consisting of both hardware and software components, so as to prevent unauthorized access to the Records. Contractor will provide the Bank with Records that are accurate, complete, sufficient and in such a manner so as to enable the Bank to comply with all laws, regulations, NMDP Standards, and applicable and then-current GXP standards concerning the storage, processing, handling and transportation of the Units, including, but not limited to, any facts or circumstances that may make either the Units, or the transportation, handling, processing, or storage thereof in any way hazardous or detrimental to health. Additionally, the Contractor and its subcontractors, if any, shall make the Records available at their respective offices for inspection by the Bank or its authorized designees at all reasonable times during the Term (defined below), and, in the event the Bank authorizes the Contractor to retain any of the Records following the termination or non-renewal of this Agreement, for three (3) years following the termination or non-renewal of this Agreement. Copies of the Records shall be furnished at no cost to the Bank upon request.

1.4 Future Services. The Contractor shall provide any other services that the Bank may reasonably request and the Parties mutually agree to in writing.

1.5 Commercially Reasonable Efforts of Both Parties; Further Assurances; Cooperation. Subject to the terms and conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under applicable laws and regulations to consummate the transactions contemplated by this Agreement. The Parties each agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement, and from time to time, upon the request of the other Party to this Agreement and without further consideration, to execute, acknowledge and deliver in proper form any further instruments, and take such other action as the other Party may reasonably require, in order to effectively carry out the intent of this Agreement.

ARTICLE 2. Consideration.

2.1 Rates for Services. Subject to the terms and conditions of this Agreement and as consideration for the performance of the Services hereunder, the Bank shall pay the Contractor at the rates set forth in the fee schedule attached hereto and incorporated herein as Exhibit B (the "Fees") or as otherwise may be set forth in an applicable Statement of Work.

2.2 Rate Adjustment. The Parties agree to work together to improve efficiency and to reduce the Fees through mutual agreement and cooperation. On the third anniversary of the Effective Date of this Agreement and on each annual anniversary thereafter, the Fees may be adjusted if Contractor can show a documented increase in costs due to changes in the cost of materials to Contractor or wages paid by Contractor (as applicable) in connection with the performance of the Services, or the Bank can show a documented decrease in cost due to changes in wages or cost of materials. Contractor and the Bank shall meet either in person or by telephone to discuss increasing or decreasing the Fees to reflect the documented change. Each Party will cooperate with the other in good faith in providing supporting documentation required by the other Party to verify any increase or decrease in the Fees.

2.3 Expenses. Any Bank pre-approved expenses such as media, materials, specifically rented or purchased equipment, special development tools, travel expenses, communications expenses, external testing, disposal costs, and other related expenses not covered under the Fees will be billed to the Bank by the Contractor. Any such expenses must be specifically set forth in Exhibit A or the applicable Statement of Work and pre-approved in writing by the Bank.

2.4 Invoices. Based on the Fees set forth in Exhibit B, Contractor shall invoice the Bank on or before the fifteenth (15th) day of each calendar month during the Term (defined below) for any Fees

due in connection with Services performed during the previous calendar month. The invoice shall include any Fees incurred for actual work performed in connection with the Services. Any Bank pre-approved expenses specified in Exhibit A or an applicable Statement of Work will be invoiced at the time of incurring the expenses. The Bank shall remit payment to the Contractor for all undisputed invoiced Fees within thirty (30) days of receipt of such invoice and, as required by IC 4-13-2-14.8 where applicable, all payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the auditor of the Indiana auditor of state.

2.5 Taxes. Contractor will report and pay all taxes, imposts, deductions, charges and duties levied in connection with all payment(s) made to Contractor hereunder. Contractor agrees to defend, indemnify and hold the Bank harmless against any damages sustained or incurred by the Bank in connection with any actions brought by a governmental entity seeking to enforce any tax liens or penalties in connection with any payment(s) made to Contractor by the Bank hereunder.

ARTICLE 3. Condition of Payment.

All Services provided by the Contractor under this Agreement must be performed to the Bank's reasonable satisfaction, as determined at the discretion of the Bank's Board of Directors, and in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and NMDP Standards. The Bank shall not be required to pay for work found to be unsatisfactory, inconsistent with this Agreement or performed in violation of any federal, state or local statute, ordinance, rule or regulation or NMDP Participation Criterion.

ARTICLE 4. Term and Termination.

4.1 Term. The Term of this Agreement shall commence on the Effective Date and shall continue for a period of two (2) years (the "Initial Term"), subject to earlier termination pursuant to the provisions of this Agreement. The Initial Term of this Agreement may be renewed at the Bank's option in one (1) year intervals (each, a "Renewal Term") by providing written notice to the Contractor at least sixty (60) days prior to the end of the Initial Term or a Renewal Term. The Initial Term and any Renewal Terms are referred to in this Agreement collectively as the "Term."

4.2 Termination for Convenience. This Agreement may be terminated, in whole or in part, by the Bank at its sole discretion upon sixty (60) days' prior written notice to the Contractor. The Contractor shall be compensated for Services properly rendered prior to the effective date of termination, but in no case shall any price increase be allowed on individual line items if the Agreement is terminated only in part. In no event will the Bank be liable for Services performed after the effective date of termination.

4.3 Termination for Cause. Either Party may terminate this Agreement upon written notice to the other Party in the event the other Party: (a) breaches or commits a default of this Agreement (which includes, without limitation, a failure of the Contractor to enter into a Business Associate Agreement pursuant to Section 9.3) or a Statement of Work (where applicable), and such breach or default is not cured within thirty (30) days following written notice to the non-breaching Party describing such default or breach; or (b) files for bankruptcy, becomes the subject of any bankruptcy proceeding, has a receiver or trustee appointed for it, executes an assignment for the benefit of creditors, or becomes insolvent. Notwithstanding the aforementioned, if the Contractor commits a breach of an obligation under this Agreement or under one or more Statements of Work (if applicable) where such breach, in the Bank's sole discretion, is not reasonably subject to cure within thirty (30) days after its occurrence, including a breach of Articles 7-9 or 15, the Bank may terminate the Agreement and/or any outstanding Statements of Work immediately upon notice to the Contractor.

4.4 Termination Plan.

(a) Contractor acknowledges and agrees that a gap in the provision of Services shall give rise to irreparable injury to the Bank and that, upon non-renewal or termination of this Agreement for any reason, steps must be in place to ensure that the Services are provided in an uninterrupted manner and have a quality consistent with those Services provided during the Term. Accordingly, within thirty (30) days of the Effective Date, the Bank and the Contractor shall convene to develop and adopt an exit strategy, that is mutually agreed upon between the Parties, to govern the Parties' obligations following termination or non-renewal of this Agreement (the "Termination Plan").

(b) Each Party shall use good faith efforts in developing the Termination Plan with the other Party and, upon adoption by both Parties, the Termination Plan shall be attached hereto as Exhibit D and incorporated herein by reference. The Termination Plan shall be in writing and shall include, among other things: (i) Contractor's obligations with respect to the provision of the Services following a termination of the Agreement for convenience or non-renewal of the Agreement; (ii) Contractor's obligations with respect to the provision of Services following a termination of the Agreement for cause; (iii) the logistics of the preservation and transfer of Units stored at the Facility to the Bank (or the Bank's designee(s)) and a timeline relating to the same, if applicable; (iv) the logistics of the preservation and transfer of Records to the Bank (or the Bank's designee(s)) and a timeline relating to the same, if applicable; (v) a plan for transitioning services relating to the collection of Units from participating hospitals and the subsequent transport of the same to the Facility, if applicable; and (vi) a schedule for the completion of the Services and conveyance activities associated with termination or non-renewal.

(c) In the event the Parties fail to mutually agree to and adopt the Termination Plan pursuant to Section 4.4(a), Contractor will continue performing the Services pursuant to the terms of this Agreement and any applicable Statements of Work for a period of five (5) months following the effective date of termination or non-renewal (the "Transition Period"). During the Transition Period, the Contractor agrees that it will fully cooperate with the Bank with respect to the secured transfer of Units, Records and any other information or matter to the Bank and/or the Bank's designee(s).

4.5 Effects of Termination or Non-Renewal. In the event this Agreement is terminated or not renewed for any reason:

(a) the Bank and the Contractor shall execute the Termination Plan pursuant to subsection 4.4(a) or, in the event the Parties fail to adopt an Termination Plan, the terms of subsection 4.4(c) shall apply;

(b) in addition to the other obligations set forth in this Agreement, within twenty (20) days of the effective date of termination or non-renewal, the Contractor shall return to the Bank (or the Bank's designee(s)) all property of the Bank, including without limitation any and all Intellectual Property of the Bank, Confidential Information of the Bank, Units, Records (in whatever format), and all Works, correspondence, notes, computer media and programs, specifications, manuals, vendor working papers, data collection forms, and any other material and equipment that relates to the business of the Bank and the Services provided by the Contractor hereunder, as well as any codes and/or encryption keys necessary to access or make use of any of the aforementioned (collectively, the "Bank Property"), unless such items are necessary to complete Contractor's surviving obligations under Section 4.4; and

(c) within five (5) days of the completion of those remaining obligations set forth in either the Termination Plan contemplated under subsection 4.4(a) or identified in subsection 4.4(c)

(whichever applicable), the Contractor shall convey all remaining Bank Property then in Contractor's possession or control to the Bank or the Bank's designee(s).

4.6 Survival. The rights and obligations set forth in Articles 7-9 and 13-15 and Sections 1.3, 4.4, 4.5, 10.2(b)-(c), 17.6 and 17.8 shall survive termination or the non-renewal of this Agreement.

ARTICLE 5. Representations and Warranties.

5.1 The Contractor represents and warrants that it shall execute its responsibilities hereunder (including, without limitation, performance of the Services) by following and applying at all times the highest professional and technical guidelines and standards, and that the Contractor personnel (and/or approved subcontractors) assigned to perform the Services possess the requisite training, skills, competence, and experience necessary to safely and properly perform the Services. If the Bank becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Agreement and/or any Statement of Work related hereto, the Bank may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

5.2 *[as applicable]* The Contractor represents and warrants that it is aware of and complies with those NMDP Standards that are applicable to the particular Services identified in Exhibit A and any and all later appended Statements of Work.

5.3 In the event that the Contractor provides products in connection with the Services under this Agreement, the Contractor represents and warrants that such products shall be free from any defects in design, material and workmanship and shall conform to the specifications agreed to between the Parties and set forth in the applicable Statement(s) of Work pursuant to Exhibit A.

5.4 If Contractor is in violation of any of the representations and warranties set forth in Sections 5.1-5.3, without prejudice to the Bank's other rights and remedies, the Contractor shall re-perform and replace the defective Services and/or products at no additional cost to the Bank and cover any liabilities arising from the same. The Bank may withhold payment of any consideration due and owing to the Contractor pending the Contractor's performance of the remedy outlined above and may ultimately cancel such payments if Contractor fails to accomplish the remedy in a satisfactory and workmanlike manner.

5.5 Pursuant to 31 U.S.C. § 1352, and any regulations promulgated thereunder, the Contractor hereby assures and certifies that no federally appropriated funds have been paid, or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal Agreement, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan or cooperative agreement. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

5.6 The signatory for the Contractor represents and warrants that he/she has been duly authorized to execute this Agreement on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Contractor when his/her signature is affixed, and accepted by the Bank.

ARTICLE 6. Insurance and Risk of Loss.

6.1 **Insurance.** During the Term, the Contractor shall secure and keep in force the following insurance coverage, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Agreement:

(a) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$5,000,000 per occurrence unless additional coverage is required by the Bank. The Bank is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Agreement; and

(b) Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence. The Bank is to be named as an additional insured on a primary, non-contributory basis.

6.2 **Proof of Policy.** The Contractor shall provide proof of such insurance coverage and all endorsements to the Bank by tendering to the undersigned Bank representative a certificate of insurance prior to the commencement of this Agreement and proof of workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the state of Indiana is required if any of the Services provided under this Agreement involve work outside of Indiana.

6.3 **Additional Policy Requirements.** The Contractor's insurance coverage must meet the following additional requirements: (a) the insurer must have a certificate of authority issued by the Indiana Department of Insurance; (b) any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor; and (c) the insurance required in this Agreement, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the Bank. Failure to provide insurance as required in these Sections 6.1-6.3 may be deemed a material breach of Agreement entitling the Bank to immediately terminate this Agreement.

6.4 **Risk of Loss.** The Contractor shall bear the risk of any loss of or to any Units resulting from the negligence of Contractor or its employees, approved subcontractors, agents or affiliates. Contractor shall be liable for loss, delay or damage of any kind resulting from defects in containers, collection kits or other storage media furnished by the Contractor, or on behalf of the Contractor, pursuant to this Agreement. Release of a Unit to a person in accordance with the instruction of the Bank shall be considered delivery to the Bank or the Bank's designee, and the Contractor's responsibilities with respect to such Unit shall cease upon such delivery.

6.5 **Environmental Costs.** In the event damage, loss or injury occurs to any of the stored Units as a result of a breach by Contractor of its obligations hereunder, the Contractor shall be solely responsible for the cost of removing and disposing of such Unit(s) and the cost of any environmental clean up and site remediation resulting from the damage, loss or injury to the Unit(s).

6.6 **Liability for Mis-shipment.** If Contractor mis-ships any Unit, Contractor shall pay the reasonable transportation charges incurred to return the mis-shipped Unit to the Facility as well as any other damages incurred by the Bank.

6.7 **Disposition of Hazardous or Detrimental Units.** If, solely as a result of a quality or condition of a Unit, the Unit is a hazard to other property, the Facility, employees or agents of the Contractor, or any third parties or otherwise detrimental to public health, the Contractor may, upon prior written notice to the Bank, dispose of such Unit(s) in any manner it desires in accordance with applicable

law. Provided the proper notice was delivered to the Bank, the Contractor shall have no liability for any Unit destroyed or otherwise made unusable as a result of a disposition pursuant to this Section 6.7.

ARTICLE 7. Ownership of Data and Intellectual Property.

7.1 Ownership of Data. The Bank owns all rights, title and interest in and to the Data and any trade secrets, patents, trademarks, copyright or other intellectual property rights embodied therein. This Agreement and the Contractor's obligations under this Agreement shall not be construed as establishing, granting, transferring to or conferring upon the Contractor, either expressly or by implication, any right or license in or to the Data.

7.2 Intellectual Property of the Bank.

(a) All analyses, reports, documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to the Effective Date, but specifically developed under this Agreement in connection with performance of the Services (the "Works") shall be considered "works made for hire" and the Contractor hereby assigns its interest, including any moral rights therein, to the Bank and all such Works are and/or will be the property of the Bank. The Contractor shall in good faith aid the Bank, at the Bank's expense, in the assignment, prosecution, exercising and enforcement of any and all intellectual property rights or interests to such Works. Use of the Works, except as expressly provided herein without the prior written consent of the Bank, is prohibited. During the performance of this Agreement, the Contractor shall be responsible for any loss of or damage to the Works while the Works are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall promptly disclose and provide the Bank full, immediate, and unrestricted access to the Works during the Term of this Agreement and at any time thereafter. The Contractor warrants that the Contractor has, in connection with its employees, agents, and subcontractors, contractual commitments in place under which such employees, agents and/or subcontractors are obligated to assign such Works to Contractor such that Contractor can fulfill its obligations to the Bank under this subsection 7.2(a).

(b) The Contractor acknowledges that any and all intellectual property rights in and to the Units are the sole property of the Bank and, other than as expressly provided herein, nothing in this Agreement shall convey any right, title or license to the Contractor with respect to the Units. Furthermore, the Contractor agrees that any inventions or improvements made, developed or conceived by the Contractor, its employees, agents or subcontractors, in connection with a Unit during the course of or as a result of providing the Services under this Agreement (an "Invention"), is the sole property of the Bank. As such, the Contractor hereby irrevocably assigns all rights, title and interests the Contractor may have in and to the Inventions to the Bank and shall, in good faith aid the Bank, at the Bank's expense, in the assignment, prosecution, exercising and enforcement of any and all intellectual property rights or interests arising therefrom. The Contractor shall promptly disclose and provide the Bank full, immediate, and unrestricted access to the Inventions during the Term of this Agreement and at any time thereafter. The Contractor warrants that the Contractor has, in connection with its employees, agents, and subcontractors, contractual commitments in place under which such employees, agents and/or subcontractors are obligated to assign such Inventions to Contractor such that Contractor can fulfill its obligations to the Bank under this subsection 7.2(b).

7.3 Intellectual Property of Contractor. All ideas, concepts, processes, methods, materials and technologies contained in inventions and improvements created by the Contractor independent of the provision of Services under this Agreement ("Know-How") shall remain exclusively the property of the Contractor. To the extent the Contractor discloses or uses its Know-How in providing the Services to the

Bank, the Contractor grants the Bank a perpetual, paid-up, worldwide, non-exclusive license to use such Know-How in the Bank's own business and in providing its products and services to others.

ARTICLE 8. Confidentiality/Disclosure.

8.1 **Confidential Information.** The Parties understand and agree that data, materials and information disclosed between the Parties during the course of the performance of this Agreement (or a Statement of Work) may contain certain confidential, proprietary and/or protected health information (collectively, the "**Confidential Information**"). For the purposes of this **Article 8**, "**Disclosing Party**" means a Party that discloses Confidential Information to the other Party, and "**Receiving Party**" means a Party that receives Confidential Information from the other Party. Confidential Information does not include information which: (a) is generally available to the public, other than through any act or omission by the Receiving Party and is not subject to a confidentiality agreement with an obligation of secrecy to the Disclosing Party or a third party; (b) the Receiving Party can show the information was in its possession at the time of the disclosure and was not acquired directly or indirectly from the Disclosing Party; or (c) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided it was not subject to a confidentiality agreement with an obligation of secrecy to the Disclosing Party or a third party.

8.2 **Ownership of Confidential Information.** Ownership of all right, title and interest in the Confidential Information shall remain at all times with the Disclosing Party, and nothing in this Agreement or a Statement of Work shall give any ownership right, title or interest in one Party's Confidential Information to the other Party.

8.3 **Non-Disclosure and Non-Use of Confidential Information.** In furtherance of this Agreement and in order to assure adequate protection of both Parties against the wrongful use or disclosure of their respective Confidential Information, the Receiving Party shall keep the Confidential Information of the Disclosing Party secret and confidential, respect the Disclosing Party's proprietary rights therein, and make use of and permit to be made use of such Confidential Information only as is necessary to perform its obligations and exercise its rights under this Agreement. Except as expressly provided herein, the Receiving Party shall not disclose any Confidential Information of the Disclosing Party or permit the disclosure thereof, to any third party, except that the Receiving Party may disclose Confidential Information: (a) upon first obtaining the Disclosing Party's express, written consent; or (b) if the Receiving Party is legally compelled to disclose the Confidential Information of the Disclosing Party and the Receiving Party provides reasonable advance notice to the Disclosing Party of the same. This obligation of confidentiality pursuant to the terms of this Agreement shall supersede any other confidentiality agreements entered into between the Bank and the Contractor.

8.4 **Approved Disclosure of Confidential Information.** Notwithstanding the aforementioned, a Receiving Party may grant access to the Disclosing Party's Confidential Information only to its employees, consultants, approved subcontractors, and other personnel, provided that such employees, consultants, approved subcontractors and other personnel (a) reasonably need to know such information in order for the Receiving Party to exercise its rights or perform its obligations under this Agreement; (b) have agreed in a prior writing to be bound by confidentiality restrictions no less restrictive than those set forth herein; and (c) are informed of the confidential nature of such Confidential Information prior to its disclosure thereto.

ARTICLE 9. Security and Privacy of Protected Health Information, Drug and Alcohol Abuse Patient Records, and Confidentiality of State Information.

In addition to **Article 8**, the Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996, Title II, Administrative Simplification ("**HIPAA**"), including amendments signed into law under the American Recovery and Reinvestment Act of 2009, in particular,

Title XIII known as the Health Information Technology for Economic and Clinical Health Act, Subtitle D, in all activities related to the Agreement, to maintain compliance during the Term and after as may be required by federal law, to operate any systems used to fulfill the requirements of this Agreement in full compliance with HIPAA and to take no action which adversely affects the Bank's HIPAA compliance.

9.1 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those found in the HIPAA Regulations under 45 CFR Parts 160, 162, and 164.

9.2 To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor assures that it will appropriately safeguard all forms of Protected Health Information ("PHI"), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under the Agreement. The Contractor agrees to comply with all applicable requirements of law relating to PHI with respect to any task or other activity it performs for the Bank including, as required by the final Privacy and Security regulations:

- a. Implementing the following HIPAA requirements for any forms of PHI that the Contractor receives, maintains, or transmits on behalf of the Bank: (i) administrative safeguards under 45 CFR § 164.308; (ii) physical safeguards under 45 CFR § 164.310; (iii) technical safeguards under 45 CFR § 164.312; and (iv) policies and procedures and documentation requirements under 45 CFR § 164.316;
- b. Implementing a disaster recovery plan, as appropriate, which includes mechanisms to recover data and/or alternative data storage sites, as determined by the Bank to be necessary to uphold integral business functions in the event of an unforeseen disaster;
- c. Not using or further disclosing PHI other than as permitted or required by this Agreement or by applicable law;
- d. Immediately reporting to the Indiana Family and Social Services Administration ("FSSA") HIPAA Compliance Office any security and/or privacy incident of which the Contractor becomes aware, including, but not limited to, any Breach of Unsecured PHI in accordance with 45 CFR § 164.410. Such notification shall be made in no case later than three (3) business days after discovery, as defined in 45 CFR § 164.410(a)(2), and shall include the information set forth in 45 CFR § 164.410(c) and such other information as reasonably requested by the Bank;
- e. Immediately reporting to the FSSA HIPAA Compliance Office any use or disclosure by the Contractor, its agent, employees, subcontractors or third parties, of PHI obtained under this Agreement in a manner not provided for by this Agreement or by applicable law of which the Contractor becomes aware, and mitigating, to the extent practicable and pursuant to the Bank's recommendation, any harmful effect that is known to the Contractor resulting from such use or disclosure;
- f. Ensuring that any subcontractors or agents to whom the Contractor provides PHI received from, created by or received by the Contractor or its subcontractors or agents on behalf of the Bank (i) agree to the same restrictions, conditions and obligations applicable to such party regarding PHI, and (ii) agrees to implement the required safeguards to protect it;
- g. Making the Contractor's internal practices, books and records related to the use or disclosure of PHI received from, or created or received by the Contractor on behalf of the Bank available to the Bank at its request or to the Secretary of the United States Department of Health and Human Services ("DHHS") for purposes of determining the Bank's compliance with applicable law. The Contractor shall immediately notify the

FSSA HIPAA Compliance Office upon receipt by the Contractor of any such request from the Secretary of DHHS or designee, and shall provide the FSSA HIPAA Compliance Office with copies of any materials made available in response to such a request;

- h. In accordance with procedures established by the State of Indiana, making available the information required to provide an accounting of disclosures pursuant to applicable law, if the duties of the Contractor include disclosures that must be accounted for;
- i. Making available PHI for amendment and incorporating any amendments to PHI in accordance with 45 CFR § 164.526, if the Contractor maintains PHI subject to amendment;
- j. In accordance with procedures established by the State of Indiana, making PHI available to individuals entitled to access and requesting access in compliance with 45 CFR § 164.524 and the duties of the Contractor;
- k. Upon the termination or non-renewal of this Agreement, return all PHI received or created under the Agreement pursuant to Section 4.5. If the Bank determines return or destruction is not feasible, the protections in this Agreement shall continue to be extended to any PHI maintained by the Contractor for as long as it is maintained.

9.3 To the extent the Bank in its sole discretion determines it to be appropriate, the Parties agree that they will enter into a Business Associate Agreement relating to the Contractor's use and/or disclosure of PHI for or on behalf of the Bank on the terms substantially as proposed by the Bank, within thirty (30) days of such determination.

ARTICLE 10. Audits.

10.1 *[as applicable]* Facility. Upon three (3) days' prior written notice, the Bank shall have the right to conduct, or to appoint representatives to conduct on its behalf, an audit of that portion of the Facility directly used in connection with performance of the Services during normal business hours in order to: (a) audit and inspect the conduct of the Contractor operations and procedures relating to the Services or Contractor's performance of the Services; (b) verify the Contractor's compliance with Confidentiality and security obligations; (c) enable the Bank to comply with all applicable laws; and (d) enable the Bank to comply with the requirements of any other government regulators and other government entities having jurisdiction over the Bank. The audits shall not be limited in number; however, such audits shall in no event unduly interfere with the conduct of Contractor's business operations. When conducting an audit, each of the Bank's representatives will (i) be subject to a nondisclosure obligation at least as restrictive as the obligations contained in Article 8 hereof; (ii) follow such security and facility access procedures as reasonably designated by the Contractor; (iii) be accompanied by a representative of Contractor; and (iv) use good faith efforts to avoid disrupting Contractor's operations. In addition to the audit by the Bank, the Contractor agrees to reasonably cooperate with applicable regulatory authorities and shall permit reasonable Unit-specific or other inspections by such regulatory authorities.

10.2 Financials.

(a) The Contractor acknowledges that, in addition to the audits contemplated under Section 10.1, it may be required to submit to at least one (1) audit of funds paid through this Agreement annually (the "Financial Audit"). Any such Financial Audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State of Indiana (the "State"). In addition, Contractor shall provide to the Bank, and its internal or external inspectors

and auditors, to information, records and documentation relating to the Services for the purpose of performing audits, tests, examinations, and inspections of the Contractor (and/or any approved subcontractors providing the Services) in order to: (i) verify the accuracy of charges and invoices; and (ii) verify Contractor's compliance with the provisions of this Agreement.

(b) Following the non-renewal or termination of this Agreement, the Contractor shall arrange for a financial and compliance audit of funds paid pursuant to this Agreement (the "Termination Audit"). Such Termination Audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the Termination Audit and any management letters are completed and forwarded to the State in accordance with the terms of this Agreement. Any Termination Audit conducted pursuant to this subsection 10.2(b) must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. Contractor agrees to provide the Indiana State Board of Accounts and the Bank an original of all Termination Audits.

(c) Any audits conducted pursuant to Section 10.2(b) shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the Bank. Each Financial Audit and/or Termination Audit shall include a statement from the auditor that the auditor has reviewed this Agreement and that the Contractor is not out of compliance with the financial aspects of this Agreement.

ARTICLE 11. Compliance with Laws.

11.1 The Contractor shall perform its obligations under this Agreement in connection with the Services in compliance with all applicable federal, state and local laws, rules, regulations and ordinances, all current GXP standards, the NMDP Standards, and all provisions required by the aforementioned, all of which are included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Agreement shall be reviewed by the Bank and the Contractor to determine whether the provisions of this Agreement require formal modification.

11.2 The Contractor warrants that the Contractor and its approved subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, accreditations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, current GXP standards, applicable NMDP Standards, or regulations in the performance of work activities under this Agreement. Failure to do so may be deemed a breach of this Agreement, grounds for immediate termination and denial of further work with the Bank.

11.3 The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 et. seq., IC § 4-2-7, et. seq., the regulations promulgated thereunder, and Executive Order 04-08 dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the Bank may, in its sole discretion, terminate this Agreement immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

11.4 The Contractor certifies by entering into this Agreement that neither it nor its principal(s), if any, is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor by the Bank. Additionally, further work or payments may be withheld, delayed, or denied and/or this Agreement suspended until the Contractor is current in its payments and has submitted proof of such payment to the Bank.

11.5 The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the Bank of any such actions. During the term of such actions, the Contractor agrees that the Bank may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Agreement.

11.6 If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the Bank decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (the "IDOA") following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the Parties. Any payments that the Bank may delay, withhold, deny, or apply under this Section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

11.7 The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

11.8 As required by IC § 5-22-3-7: The Contractor and any principals of the Contractor certify that (a) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC § 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC § 24-5-12 [Telephone Solicitations], or (iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and (b) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Agreement, even if IC § 24-4.7 is preempted by federal law.

11.9 The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (a) except for de minimis and nonsystematic violations, has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and (b) will not violate the terms of IC § 24-4.7 for the duration of the Agreement, even if IC § 24-4.7 is preempted by federal law.

ARTICLE 12. Debarment and Suspension.

12.1 The Contractor certifies by entering into this Agreement that neither it nor its principals nor any of its approved subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

12.2 The Contractor certifies that it has verified the state and federal suspension and debarment status for all approved subcontractors receiving funds under this Agreement and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the Bank if any approved subcontractor becomes

debarred or suspended, and shall, at the Bank's request, take all steps required by the Bank to terminate its contractual relationship with the approved subcontractor for work to be performed under this Agreement.

ARTICLE 13. Disputes.

Any dispute arising from this Agreement shall be subject to the dispute resolution procedures stipulated in this Article 13.

13.1 Informal Dispute Resolution. Except for any action involving or relating to any obligation pursuant to Articles 7-9, and/or subject to the exception provided for in Section 13.5, all other disputes are subject to this Section 13.1.

(a) If a Party to the Agreement is not satisfied with the progress toward resolving a dispute, the unsatisfied Party must notify the other Party in writing of its dissatisfaction. Following the other Party's receipt of such written notice, the Parties have ten (10) business days, unless the Parties mutually agree to extend this period, to resolve the dispute. If the dispute is not resolved within ten (10) business days, a dissatisfied party will submit the dispute in writing according to the following procedure:

- i. The Parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration (the "Commissioner"). The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the Bank within ten (10) business days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the Parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either Party mails or otherwise furnishes to the Commissioner, within ten (10) business days after receipt of the Commissioner's decision, a written appeal. Within ten (10) business days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) business days, the Parties may mutually agree to submit the dispute to mediation for a determination. If a Party is not satisfied with the Commissioner's ultimate decision, the dissatisfied Party, may submit the dispute to an Indiana court of competent jurisdiction.
- ii. The Bank may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the Bank to the Contractor of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for Contractor to terminate this Agreement, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

13.2 Venue and Jurisdiction. The Parties hereby submit and consent to the exclusive venue in and the exclusive jurisdiction of any state or federal court located within Marion County of the State of Indiana and irrevocably agree that all actions or proceedings relating to this Agreement and any Statement of Work hereunder, if applicable, shall be exclusively brought and exclusively litigated in such courts. Each of the Parties waives any objection or defense which it may have based on lack of jurisdiction, on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.

13.3 Continued Performance. Subject to Section 13.5, both Parties shall continue performing their respective obligations and responsibilities under this Agreement and any Statement of Work, if applicable, while any dispute is being resolved in accordance with this Article 13, unless and until such

obligations are terminated or expire in accordance with the provisions of this Agreement and/or the applicable Statement of Work, if applicable.

13.4 Equitable Remedies. Nothing in this Article 13 shall prevent, or be construed as preventing, a Party from: (a) instituting formal proceedings to avoid the expiration of any applicable limitations period; or (b) seeking injunctive or other equitable relief in a court of appropriate jurisdiction. Without limiting either Party's rights to seek equitable relief whenever appropriate, the Parties agree that in the event of any breach or threatened breach of any provision of this Agreement concerning Confidential Information, Intellectual Property Rights, or Sections 4.4 or 13.3, money damages would be an inadequate remedy, and the non-breaching Party would suffer irreparable harm. Accordingly, such provisions may be enforced by temporary restraining order, preliminary or permanent, mandatory or prohibitory injunction, specific performance or other similar order of a court of competent jurisdiction.

13.5 Withholding of Payments/Continuation of Obligations.

(a) The Bank may withhold payment of those portions of any invoices with which it has a bona fide dispute.

(b) An amount shall be considered to be the subject of a bona fide dispute if within forty-five (45) days after the receipt of the invoice, the Bank delivers a notice describing in reasonable detail the basis of the dispute and the amount being withheld (the "Bank Notice").

(c) Without prejudice to the foregoing, if the Contractor gives notice to the Bank that it does not agree with the position set forth in the Bank Notice, the Bank shall initiate the dispute resolution procedure with respect to such dispute and shall be entitled to continue to withhold the disputed amounts pending resolution of the dispute.

(d) Neither the withholding of the payment nor the dispute shall entitle the Contractor to discontinue the performance of the Services pending resolution of such dispute, nor shall such dispute relieve the Bank from obligation to pay when due the undisputed portion of the invoice.

(e) Subject to this Section 13.5, each Party agrees to continue performing its obligations under this Agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance. Good faith disputes over payment shall not be deemed to preclude performance.

(f) The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Agreement that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the Bank or the Contractor as a result of such failure to proceed shall be borne by the Contractor.

13.6 Governing Law. All questions concerning the validity, interpretation and performance of this Agreement and all Exhibits to this Agreement and Statements of Work arising herefrom shall be governed by and decided in accordance with the laws of the United States and the State of Indiana without regard to conflicts of laws principles that would require the application of the laws of any other jurisdiction.

13.7 Urgency. The Parties shall use commercially reasonable efforts to resolve disputes arising under this Agreement as rapidly as possible. Time is of the essence in the resolution of disputes.

ARTICLE 14. Indemnification.

14.1 Indemnification by Contractor. To the fullest extent allowed by law, Contractor shall defend, indemnify and hold harmless the Bank and any of the Bank's representatives, affiliates, employees, officers, directors and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, claims, royalties, fines, penalties, costs and expenses (including, but not limited to, attorneys' fees and expenses, whether incurred in defending such a claim, in enforcing this agreement, or otherwise) (each a "Claim") arising out of, relating to, or resulting from any of the following: (a) *[to be made consistent with Services]* the Contractor's use, handling, documentation, treatment, processing, refining, extraction, storage, disposal, transportation, or re-sale of the Units; (b) Contractor's storage and maintenance of the Records (including, but not limited to the Data); (c) any act, omission or misrepresentation of Contractor, its agents, employees or subcontractors relating to Contractor's (or its subcontractors') performance of this Agreement (including any Claims of Contractor's employees for which Contractor's liability would otherwise be limited or barred under applicable workers' compensation or similar laws), unless resulting solely from the willful misconduct of Bank; (d) any violation by Contractor or its subcontractors of any federal, state or local law or regulation, including without limitation, current GXP standards, the applicable NMDP Standards and/or any HIPAA regulations; (e) any loss of any Unit; (f) a third party claim alleging that performance of the Services infringes a third party intellectual property right provided such Services were not performed pursuant to the specifications supplied by the Bank; and (g) any breach of any obligation or responsibility of the Contractor under this Agreement.

14.2 Indemnification Procedure. If the Bank intends to seek indemnification pursuant to this Article 14, the Bank shall promptly give notice to the Contractor describing the Claim in reasonable detail; provided, however, the failure to provide such notice shall not affect the obligations of the Contractor unless and only to the extent the Contractor is actually prejudiced thereby. Within thirty (30) days after receipt of such notice, the Contractor shall give notice to the Bank whether (a) the Contractor agrees to indemnify the Bank and undertake, conduct and control, through counsel of its own choosing and at its own expense, the settlement or defense of such Claim; (b) to reserve its rights to indemnify the Bank and undertake, conduct and control, through counsel of its own choosing, the settlement or defense of such Claim; or (c) to affirmatively refuse to indemnify the Bank. If the Contractor takes the actions described in subsections 14.2(a) and (b) immediately above, the Bank may participate in such settlement or defense through counsel chosen by it; provided further, however, that the fees and expenses of such counsel shall be borne by the Bank. The Contractor shall not, without the written consent of the Bank, settle or compromise to any action, if such settlement or consent shall impose any obligations or restrictions on the Bank. If the Contractor fails to take the actions described in subsections 14.2(a) and (b) immediately above, the Bank shall have the right to contest, settle or compromise any Claim without the consent of the Contractor; provided, however, that in such case, the Bank shall not thereby waive any right to indemnity therefore pursuant to this Agreement. In all events, the Bank and the Contractor shall cooperate fully in all aspects of any investigation, defense, pretrial activities, trial, compromise, settlement or discharge of any Claim with respect to which indemnity is sought hereunder including, but not limited to, providing the other Party with reasonable access to employees and officers (including as witnesses) and other information necessary for defense of the Claim.

ARTICLE 15. Limitation of Liability.

15.1 IN NO EVENT SHALL THE BANK, OR ANY OF THE BANK'S REPRESENTATIVES, AFFILIATES, OFFICERS, DIRECTORS OR AGENTS BE LIABLE TO THE CONTRACTOR OR ANY THIRD PARTY UNDER THIS AGREEMENT OR ANY STATEMENT OF WORK FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOST PROFITS, LOST REVENUES, OR OPPORTUNITY COSTS EVEN IF THE BANK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

15.2 The Bank's total liability to the Contractor for any claim or series of related claims shall not exceed the aggregate of the amounts of unpaid, undisputed invoices payable to Contractor by the Bank under this Agreement.

ARTICLE 16. Licensing and Accreditation Standards.

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing the Services to be provided by the Contractor pursuant to this Agreement including, without limitation, those licensure and accrediting standards set forth in the NMDP Standards that are applicable to the Services. The Bank will not pay the Contractor for any Services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, regulations or accreditations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify the Bank immediately and the Bank, at its option, may immediately terminate this Agreement. *[List the expected Accreditations in an Exhibit A]*

ARTICLE 17. Miscellaneous.

17.1 Assignment; Successors. The Contractor binds its successors and assignees to all the terms and conditions of this Agreement. Except where expressly provided in Exhibit A or a Statement of Work, the Contractor shall not assign or subcontract the whole or any part of this Agreement without the Bank's prior written consent. Any assignment of this Agreement or a Statement of Work in contravention of this Section shall be null and void. In such instances where Contractor is expressly authorized to subcontract some or all of its obligations under this Agreement pursuant to Exhibit A or a Statement of Work, Contractor may only do so provided that (a) any such subcontractors have entered into written confidentiality agreements with Contractor that provide confidentiality obligations no less restrictive than those contained in this Agreement; (b) Contractor obtains the Bank's advance written notice to use such subcontractor; and (c) Contractor shall not be relieved of primary liability under this Agreement for any breach caused by such subcontractors. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the Bank, provided that the Contractor gives written notice (including evidence of such assignment) to the Bank thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

17.2 Drug-Free Workplace Certification.

(a) The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the Bank within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of Agreement payments, termination of this Agreement and/or debarment of contracting opportunities with the State for up to three (3) years.

(b) In addition to the provisions of the above subsection 17.2(a), if the total Fees to be paid by the Bank to Contractor in connection with this Agreement is in excess of \$25,000.00 USD, the Contractor hereby further agrees that this Agreement is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a Agreement shall be made, and no Agreement, purchase order or agreement, the total

amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the Agreement or agreement as part of the Agreement documents.

(c) The Contractor certifies and agrees that it will provide a drug-free workplace by:

- i. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- ii. Establishing a drug-free awareness program to inform its employees of (A) the dangers of drug abuse in the workplace; (B) the Contractor's policy of maintaining a drug-free workplace; (C) any available drug counseling, rehabilitation and employee assistance programs; and (D) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- iii. Notifying all employees in the statement required by subsection 17.2(c)(i) above that as a condition of continued employment, the employee will (A) abide by the terms of the statement; and (B) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- iv. Notifying the Bank in writing within ten (10) days after receiving notice from an employee under subsection 17.2(c)(iii)(B) above, or otherwise receiving actual notice of such conviction;
- v. Within thirty (30) days after receiving notice under subsection 17.2(c)(iii)(B) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (A) taking appropriate personnel action against the employee, up to and including termination; or (B) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- vi. Making a good faith effort to maintain a drug-free workplace through the implementation of subsections 17.2(c)(i) through (v) above.

17.3 Independent Contractor. The Contractor, in furnishing the Services hereunder, is acting as an independent contractor, and the Contractor has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all Services to be performed by the Contractor and its personnel and/or approved subcontractors under this Agreement. Neither Party is an agent of the other or has any authority to represent the other as to any matters, except as expressly authorized in this Agreement. Nothing contained herein shall be construed as creating a corporation, partnership, association, joint stock company, business trust, joint venture, organized group of persons – whether incorporated or not – involving the Parties. Unless expressly authorized by this Agreement, neither of the Parties shall have the authority or right, nor shall any Party hold itself out as having the authority or right, to assume, create or undertake any obligation of any kind whatsoever, express or implied, on behalf of or in the name of the other Party. The Contractor shall be solely responsible for providing all necessary unemployment and workers' compensation insurance for, as well as paying all taxes in connection with,

the Contractor's employees and approved subcontractors in connection with the performance of the Services under this Agreement.

17.4 Merger & Modification. This Agreement constitutes the entire agreement between the Parties. No understandings, agreements, or representations, oral or written, not specified within this Agreement will be valid provisions of this Agreement. This Agreement may not be modified, supplemented or amended, except by written agreement signed by both Parties.

17.5 Nondiscrimination. This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC § 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a breach of this Agreement, but nothing in this covenant shall be construed to imply or establish an employment relationship between the Bank and any applicant or employee of the Contractor or any subcontractor. Pursuant to the Indiana Civil Rights Law, specifically including IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

17.6 Announcements and Notices.

(a) The Bank and Contractor representatives responsible for management of the Services and to whom notices under this Agreement are to be sent are listed in Exhibit C, which is attached hereto and incorporated herein. Notices required under this Agreement will be sent to the addresses listed in Exhibit C and will be deemed received: (i) on the 1st day after deposit with an overnight courier, charges prepaid; (ii) as of the day of receipt, if sent via first class U.S. Mail, charges prepaid, return receipt requested; or (iii) as of the day of receipt, if hand delivered.

(b) Either Party may, by giving written notice to the other Party as specified herein, change the address to which notice shall be sent.

(c) The Contractor shall not make public announcement or disclosure relating to this Agreement or the Services hereunder without the prior written consent of the Bank. The Contractor shall notify the Bank in writing prior to making any announcement or disclosures required by law or governmental authority.

17.7 Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Agreement shall be resolved by giving precedence in the following order: (a) this Agreement, (b) Exhibits hereto, and (c) any Statements of Work entered into between the Parties pursuant to Exhibit A. All of the foregoing are incorporated fully by reference. All Exhibits, and all documents referred to in this Article are hereby incorporated fully by reference.

17.8 Penalties/Interest/Attorney's Fees. The Bank will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorneys' fees, except as permitted by Indiana law, in part, pursuant to IC § 5-17-5, IC § 34-54-8, and IC § 34-13-1. Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the Bank's failure to make prompt payment shall be based solely on the amount of funding originating from the Bank and shall not be based on funding from federal or other sources.

17.9 Severability. If a court of competent jurisdiction makes a final determination that any term or provision of this Agreement is invalid or unenforceable, and all rights to appeal the determination have been exhausted or the period of time during which any appeal of the determination may be perfected has been exhausted, the remaining terms and provisions shall be unimpaired and the invalid or unenforceable term or provision shall be deemed replaced by a term or provision that is valid and enforceable and that most closely approximates the intention of the Parties with respect to the invalid or unenforceable term or provision, as evidenced by the remaining valid and enforceable terms and conditions of this Agreement.

17.10 Substantial Performance. This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any Exhibits, written amendments or supplements.

17.11 Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver is in writing and signed by the Party claimed to have waived such right. Neither the Bank's review, approval or acceptance of, nor payment for, the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Contractor shall be and remain liable to the Bank in accordance with applicable law for all damages to the Bank caused by the Contractor's negligent performance of any of the Services furnished under this Agreement.

17.12 Prevention of Fraud and Abuse.

(a) In accordance with 42 U.S.C. 1396a(a)(68), Contractor shall establish and disseminate, to its employees (including management), approved subcontractors, and agents, written policies that provide detailed information about federal and state False Claims Acts, whistleblower protections, and Contractor policies and procedures for preventing and detecting fraud and abuse. The written policies described in this Section 17.12 may be on paper or in electric form and must be adopted by the subcontractors and agents of the Contractor. If Contractor maintains an employee handbook, the Contractor shall provide the described information specifically in the employee handbook.

(b) In any inspection, review, or audit of the Contractor by (or at the behest of) the state or federal government, the Contractor shall provide upon request copies of its written policies regarding fraud, waste, and abuse. Contractor shall submit to the Office of Medicaid Policy and Planning a corrective action plan within sixty (60) days if the Contractor is found not to be in compliance with any part of the requirements stated in this Section 17.12. If Contractor is required to submit a corrective action plan and does not do so within sixty (60) days, the Bank may withhold payment to the Contractor until a corrective action plan is received.

17.13 Assurance of Compliance with Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990 and Title IX of the Education Amendments of 1972. The Contractor agrees that it, and all of its approved subcontractors, will comply with the following:

(a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 80), to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Agreement.

(b) Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 84), to the end that, in accordance with Section 504 of that Act and the Regulation, no otherwise qualified handicapped individual in the United States shall, solely by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Agreement.

(c) The Age Discrimination Act of 1975 (Pub. L. 94-135), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Health and Human Services (45 C.F.R. Part 91), to the end that, in accordance with the Act and the Regulation, no person in the United States shall, on the basis of age, be denied the benefits of, be excluded from participation in, or be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Agreement.

(d) The Americans with Disabilities Act of 1990 (Pub. L. 101-336), as amended, and all requirements imposed by or pursuant to the Regulation of the Department of Justice (28 C.F.R. 35.101 et seq.), to the end that in accordance with the Act and Regulation, no person in the United States with a disability shall, on the basis of the disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Agreement.

(e) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681, 1683, and 1685-1686), and all requirements imposed by or pursuant to regulation, to the end that, in accordance with the Amendments, no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the Contractor receives Federal financial assistance under this Agreement.

(f) The Contractor agrees that compliance with this assurance constitutes a condition of continued receipt of Federal financial assistance, and that it is binding upon the Contractor, its successors, transferees and assignees for any period during which such assistance is provided. The Contractor further recognizes that the United States shall have the right to seek judicial enforcement of this assurance.

17.14 Waiver of Warehouseman's Lien. The Contractor hereby waives any lien, claim or security interest it may have on or with respect to the Unit(s) subject to this Agreement (including any warehouseman's lien).

17.15 Counterparts. This Agreement may be executed in one or more counterparts, including a facsimile counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement. Only one counterpart signed by the Party against which enforceability is sought needs to be produced to evidence the existence of this Agreement.

-- REMAINDER OF PAGE INTENTIONALLY LEFT BLANK --

IN WITNESS WHEREOF, the Parties have set their respective hand the day and year here before written:

"BANK"
INDIANA CORD BLOOD BANK, INC.

"CONTRACTOR"

By: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

[Description of Services – to be finalized in collaboration with Contractor(s)]

I/2453005.6

EXHIBIT B

"Fee Schedule"

EXHIBIT C

"Notices"

If to the Bank:

Indiana Cord Blood Bank, Inc.
402 W. Washington Street, Room 461
Indianapolis, Indiana 46204
Attn: Michael Gargano
Facsimile: _____
Telephone: _____
E-mail: _____

If to the Contractor

[Contractor Name]
[Contractor Address]
[Contractor Designee]
[Facsimile]
[Telephone]
[E-mail]

EXHIBIT D
"Termination Plan"